IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.MC.No. 57 of 2004(B)

CC.196/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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PETITIONER: ACCUSED

SIDDIQUE, S/O. ABOOBAKCER HAJI,
PALEMBADIYIL KUDIYIRIKKAL HOUSE,
KOOTTILANGADI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
EDAKKARA POLICE STATION - THROUGH THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. M.C. No. 57 OF 2004 B

Dated this the 31st day of July, 2007

O R D E R

In this petition filed under section 482 Cr.P.C., the petitioner, who is the accused in C.C.No.196/03 on the file of the JFCM, Nilambur for offences punishable under sections 279, 337 and 338 IPC, challenges the cognizance taken by the Magistrate beyond the period of limitation without hearing the petitioner.

2. The occurrence forming the subject matter of the charge sheet was on 22.3.1997. The final report was filed on 24.6.2002. Going by the period fixed under section 468 Cr.P.C., the maximum period applicable is two years of imprisonment for which the period of limitation is three years. Hence, the final report filed on 24.6.02 is on the face of it barred by limitation. No petition appears to have been filed along with the charge sheet explaining the delay and seeking condonation of the same. It was overlooking the bar of limitation that the Magistrate took cognizance and took the case on file as C.C.No.196/03

3. Going by the decisions of the apex court in ***State of Maharashtra Vs. Sharadchandra Vinayak Dongre and others***

[AIR 1995 SC 231] and that of this court in ***Eciyo Coconut Oils (P) Ltd. Vs. State of Kerala*** [2002 (1) KLT 172], the Magistrate was bound to issue notice to the accused and give the accused an opportunity of being heard before taking cognizance in a case where the final report was filed after the period limited by section 468 Cr.P.C. The learned Public Prosecutor also prayed for an opportunity to explain the delay by filing an appropriate petition. Under these circumstances, the cognizance taken in C.C.No.196/03 is quashed and the matter is remitted to the court below for considering the question of limitation. It shall be open to the prosecution petitioner to explain the delay in filing the final report. The court below shall, after hearing both sides, consider whether the delay is liable to be condoned or not and it is only after condoning the delay that the court shall proceed to take cognizance.

This revision is accordingly disposed of.

The parties shall appear before the Magistrate without any further notice on 20.8.2007.

(V. RAMKUMAR, JUDGE)

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